# FEDERAL COMMUNICATIONS COMMISSION

DOCKET FILE COPY ORIGINAL

Volume: 1

Paqes:

1 through 26

Place:

Washington, D.C.

Date:

September 23, 1997

# HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
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# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In Re Applications of:

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CLASSIC SPORTS NETWORK

)

CG Docket No.: 97-171

Courtroom 1 FCC Building 2000 L Street, N.W. Washington, D.C.

Tuesday, September 23, 1997

The parties met, pursuant to the notice of the Judge, at 9:00 a.m.

BEFORE: HON, JOSEPH CHACHKIN

Administrative Law Judge

#### APPEARANCES:

## On behalf of Petitioner:

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### On Behalf of the Agency:

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#### On Behalf of the Respondent:

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WITNESSES: DIRECT CROSS REDIRECT RECROSS DIRE

None.

Hearing Began: 9:00 a.m. Hearing Ended: 9:29 a.m.

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- JUDGE CHACHKIN: Be seated. Good morning.
- 3 ALL: Good morning, Your Honor.
- 4 JUDGE CHACHKIN: May I have the appearances on
- 5 behalf of the parties on behalf of Classic Sports Network,
- 6 Inc.?
- 7 MR. HORTON: Your Honor, my name is Phil Horton,
- 8 from Arnold and Porter. I have with me my colleagues Robert
- 9 Cooper and Rich Rosen.
- 10 JUDGE CHACHKIN: And on behalf of Cablevision
- 11 Systems Corporation? I guess no one's coming?
- MR. DAVIS: I'm Bill Davis here for Cablevision.
- 13 I'm sorry, Your Honor. I assume I'm in the right place,
- 14 although I'm late.
- JUDGE CHACHKIN: You are in the right place,
- 16 that's right.
- MR. DAVIS: And I am late, and I apology.
- JUDGE CHACHKIN: All right. Apology accepted.
- 19 MS. KLINE: I'm from the FCC. I'm Deborah Kline,
- 20 and Allan Manuel.
- JUDGE CHACHKIN: All right. I didn't hear your
- 22 name on behalf of Cablevision.
- MR. DAVIS: Bill Davis. William Davis. Thank
- 24 you. I was waiting for my colleagues downstairs who may be
- 25 walking in in the middle, which is why I'm a little delayed.

- 1 So I apologize for that as well. And if they do come in,
- 2 I'll introduce them at that time for the record.
- JUDGE CHACHKIN: All right. Well, as you know,
- 4 the hearing designation order requires me to make a
- 5 determination as to whether there is credible proof whether
- 6 Cablevision acquired a financial interest in Classic Sports
- 7 video program service as a condition of carriage on one or
- 8 more of Cablevision cable systems. And also whether there's
- 9 credible proof whether Cablevision retaliated against
- 10 Classic Sports for failing to provide exclusive rights
- against any other multichannel video programming distributor
- as a condition of carriage on one or more of Cablevision's
- 13 cable systems.
- This is, as far as I know, the first case of this
- 15 kind, and I leave it to the parties to tell me how they
- intend to proceed in this proceeding. First of all, let me
- 17 ask you, Mr. Horton.
- MR. HORTON: Your Honor, I think the best thing
- 19 for us to do today is to set a schedule. As you know, under
- 20 the rules the staff is supposed to decide the case on the
- 21 papers, if possible, although the Commission anticipated
- 22 that most cases would not be susceptible to being decided on
- 23 the papers. The staff could conduct limited discovery if
- 24 they thought that that would do so, and if more discovery
- was needed, and that the issues were particularly disputed,

- 1 it should be sent on for hearing.
- In our view, while we want to move rapidly, we're
- 3 the people that are being hurt in the marketplace, in our
- 4 view, by not being carried by Cablevision, we think it would
- 5 make sense to engage in some discovery. In fact, it's our
- 6 intention to file some document requests and some
- 7 interrogatories within the next day or so. They're under
- 8 preparation but the I's are not dotted and the T's are not
- 9 quite crossed. But we're close.
- 10 And following that, we think there are a number of
- 11 depositions that ought to be taken that were forgotten, and
- 12 six or seven affidavits were submitted by Cablevision with
- its answer to our complaint. We'd obviously like to see
- what those people have to say. And there were a few people
- that were conspicuous by their absence, in our view, that we
- 16 thought we'd see affidavits coming in.
- So our thought is a round of written discovery,
- 18 document requests, interrogatories. Both on our claims, by
- 19 the way, on some of their defenses. They've raised a number
- of defenses, such as lack of channel capacity as a reason
- 21 for not carrying us; complaints that our prices were too
- 22 high; two or three others. Things that are within, really,
- their knowledge to explain to us. In particular, we need
- 24 some discovery to test their defenses, in addition to
- 25 establishing our claims.

1	My proposal had been that we would get our
2	discovery on file, our written requests on file very
3	rapidly, within the next couple of days or so. And we'd
4	like to commence depositions as soon as we've seen the
5	responses to that. We obviously want to have the documents
6	in hand before we take depositions, with an eye towards
7	setting a discovery cut-off in three months, something like
8	that, to give us time to do this.
9	I'm sure they're going to want to depose our
10	people as well. I'd be glad to have things go one way, but
11	I suspect that that won't happen.
12	JUDGE CHACHKIN: Mr. Davis, how do you intend to
13	proceed? In like fashion?
14	MR. DAVIS: I hope not. The issues as we see them
15	are very straightforward, as you recited at the beginning of
16	the hearing today. The allegations have been laid out in a
17	fairly lengthy complaint. The answer is, I think, on the
18	lengthy side, with quite a bit of detail. We would just as
19	soon go to hearing and put on the witnesses, without going
20	through the type of extensive discovery that I've heard
21	suggested here today.
22	Already they're talking about it sounded like
23	close to 10 depositions. They were saying six or seven of
24	the people who submitted declarations, plus others that

didn't submit declarations. And then in federal court now -

25

- which I know we're not in federal court -- it's very
- 2 unusual that you would have more than five depositions in
- 3 certain courts. And here we're talking about 10
- 4 depositions, documents, interrogatories. It seems like an
- 5 incredible amount of very expensive and time-consuming
- 6 discovery for a fairly straightforward, factual dispute.
- 7 Let's schedule a hearing and put our witnesses on.
- 8 MR. HORTON: Your Honor, this is precisely what
- 9 the Commission spoke to in the report and order establishing
- the rules. If you look at the report and order they'll say
- that if cases can be established that simply, the staff
- should do it. Paragraph 34 of the report and order says
- 13 that the case should be referred to an Administrative Law
- Judge if extensive discovery -- which is the phrase that the
- 15 Commission uses in Paragraph 34 -- is required. And that
- was quoted in the designation order here.
- 17 We agree to the extent that we think that large
- parts of the case are pretty straightforward, but we want to
- 19 see what's in their files. I haven't the slightest doubt
- 20 that the reason they're suggesting that we go straight to a
- 21 hearing is because they don't want us to see what's in their
- 22 files.
- In particular, they say they've raised a number of
- 24 defenses that we need an ability to test. Lack of channel
- 25 capacity, we need to look into that. They can't just stand

- 1 up and say, "Well, we didn't carry you because we had
- 2 nowhere to put you." Where they have multiple systems and
- new channels are going on and off, we need to be able to
- 4 look into that.
- 5 MR. DAVIS: Well, let me be clear. We would be
- 6 prepared to give document discovery on the core issues in
- 7 the case. I don't want anybody to think that Cablevision's
- 8 position is that we refuse to give any discovery, that's not
- 9 our position. We'd be prepared to give reasonable document
- 10 discovery on the issues in the case. It's the notions of
- 11 these extensive depositions and extensive document discovery
- that sounds very broad that Classic Sports has in mind that
- we disagree with, that is inappropriate in this proceeding.
- JUDGE CHACHKIN: Well, you see, I'm at a handicap
- since I don't have any papers before me except the
- 16 designation order. So I don't know what the contents of the
- 17 complaint were, or the response, or anything.
- 18 MR. HORTON: Oh, I'm sorry, Your Honor. I would
- 19 have assumed that the file would have been forwarded to you.
- JUDGE CHACHKIN: No, I haven't seen the file.
- MR. HORTON: We'll certainly arrange to get a set
- 22 delivered to you this afternoon. I apologize for that, I
- assumed that that would have come straight on from the
- 24 Commission.
- MR. DAVIS: If you'd like, we could try to meet

- and see if we can make progress on the scope of discovery.
- 2 Although, from what I'm hearing here today I'm not as
- optimistic as I might otherwise be, given the breadth that
- 4 they're talking about.
- JUDGE CHACHKIN: Well, I certainly think it would
- 6 be helpful if the parties can agree on their own to the
- 7 nature of discovery, without the need of my participating in
- 8 it, making rulings. And certainly I want the parties to
- 9 meet and talk about discovery, and if you can't reach
- 10 agreement, then of course you'd come to me and I'll make a
- 11 ruling. So why don't the parties get together and talk
- 12 about the scope of discovery?
- 13 For one thing, you could tell them what documents
- 14 you want and maybe they'll give it to you voluntarily,
- 15 without the need to make a ruling on it. And similarly,
- with respect to the depositions, you can indicate the number
- of deponents you intend to depose and the nature of the
- 18 inquiries, why there's a need to depose these individuals.
- 19 And again, hopefully the parties will be able to agree and
- I won't have to make a ruling.
- MR. HORTON: I'll be delighted to sit down. From
- 22 what I hear this morning -- and Mr. Davis and I had a
- 23 conversation before we came over here. We didn't go into
- 24 detail about exactly what we were seeking, but we talked
- 25 about concepts. So I think he knew pretty much what I was

- going to say, and I knew pretty much what he was going to
- 2 say this morning. But I'm happy to sit down and go over
- with him in detail, and see if we can reach a resolution.
- I'm not -- given the gulf right now, I'm not
- 5 optimistic, but I'm certainly prepared to give it a shot.
- JUDGE CHACHKIN: Do you know the names of the
- 7 individuals you want to depose?
- 8 MR. HORTON: Well, I know the names of the people
- 9 I want to depose right now, subject to seeing what's in
- their documents. There's always the possibility that any
- 11 response to documents or interrogatory requests -- we may
- find that there's a person that's on their side that's a key
- person that we don't know about right now. But as I say,
- 14 they had six or seven affidavits attached to their answer,
- and we obviously want those people. And there were several
- other people who were referenced in our complaint and their
- 17 specific allegations in our complaint about other folks at
- 18 Cablevision that they didn't submit affidavits for.
- And frankly, when we saw that, our assumption was
- that they didn't submit affidavits in hopes of shielding
- 21 them from having to be deposed because they're such obvious
- 22 deposition candidates.
- MR. DAVIS: Well, again, I'm happy to sit down and
- 24 talk about it, but I just think when they're talking 10-plus
- depositions, it's completely unreasonable in a proceeding of

- this type. But I'd be glad to sit down with them and we'll
- 2 go over the names, see who they want to depose, and
- 3 hopefully we can reach an agreement. If not, we'll have to
- 4 come back.
- 5 MR. HORTON: Just briefly, Your Honor. I'm sorry
- 6 to get into a ping-pong game, but in terms of a proceeding
- of this type, the type is that it's supposed to be referred
- 8 to you if extensive discovery is needed. And we're not
- 9 asking for anything that's not contemplated by the Part One
- 10 rules. These are all forms of discovery that are allowed
- under the general hearing rules for Part One, so I don't
- think we're seeing anything extraordinary at all.
- 13 JUDGE CHACHKIN: What is the position of the Cable
- 14 Bureau?
- MS. KLINE: The Cable Bureau was unable from the
- 16 pleadings to make a -- to determine what actually happened
- here, the facts. And that's why we referred this to Your
- 18 Honor, so that discovery can be taken, so that you can make
- a recommended decision, and then so the Bureau could apply
- 20 the law to the facts.
- JUDGE CHACHKIN: So you don't think that discovery
- 22 which has been represented here is unreasonable in your
- 23 mind?
- MS. KLINE: That's correct.
- 25 JUDGE CHACHKIN: The possible three months to

- 1 conduct discovery?
- MR. MANUEL: Your Honor, that's subject to your
- 3 discretion. In the report and order the Commission speaks
- 4 of attempting to resolve these matters as expeditiously as
- 5 possible. As Classic Sports has alluded to, that they're
- 6 the ones that are being injured in one sense. So that is an
- 7 interest that you have the discretion to grant the number of
- 8 depositions in the procedure, mindful that we are trying to
- 9 do this as expeditiously as possible.
- 10 And Your Honor, on another notes, there are two
- 11 public copies, public files of all the pleadings in this
- matter, which the Bureau turned over to the Commission, and
- 13 which should have been forwarded to Your Honor. But in
- 14 addition there are confidential versions of the documents,
- and the Bureau granted a request to keep the matter as
- 16 confidential. But that request and our grant of
- 17 confidentiality would not enter into this proceeding, and
- 18 Your Honor would have to make a determination.
- MR. HORTON: As I say, Your Honor, we'll get you a
- 20 set of those right away.
- JUDGE CHACHKIN: All right. Does anyone have any
- 22 objection to my looking at this material? Although,
- 23 apparently it's a public file, you said.
- MR. DAVIS: No, absolutely not. We'd be happy for
- you to look it, with no objection whatsoever. I do have to

- take issue with one thing that I'm hearing today, and that
  is on one hand, the dispute in the proceeding, and on the
- other hand, the quite amazing scope of discovery that's
- 4 being suggested.
- What we would suggest is that the hearing go
- 6 forward as scheduled at the beginning of November. And to
- 7 do that, we're not going to have the type of three, four
- 8 month -- you know, three lawyers on each side spending full-
- 9 time and a lot of money doing discovery that's going to be
- 10 completely unnecessary. It won't be used at the hearing.
- JUDGE CHACHKIN: Why do you say it's unnecessary?
- MR. DAVIS: Well, because we're not going to call
- 13 10 witnesses on our side. They don't need to do 10
- depositions. We're going to have -- we'll mostly likely
- going to have less than that, certainly. And if we want to
- 16 have a rule where we'll have depositions for the witnesses
- 17 we call, that's something I'd be happy to talk about. But
- to go on a fishing expedition through our files, and to
- 19 depose our chairman of the board or president, people that
- 20 weren't involved in the facts at issue, I think is very
- 21 unreasonable. It's very burdensome and harassing.
- 22 And although I hear the Commission saying that the
- 23 Commission's in agreement that some discovery may be
- 24 appropriate and that's why it was referred to you, I'd like
- 25 to hear some more whether they think that it's appropriate

- 1 to -- it sounds like almost unlimited discovery that I'm
- 2 hearing across the table. I haven't heard any limits
- whatsoever to the scope of discovery that they're prepared
- 4 to propound. And it's just harassing and it's burdensome.
- JUDGE CHACHKIN: Well, it's a little too early in
- 6 the game to say it's harassing and burdensome, since you
- 7 haven't seen the scope of discovery yet --
- 8 MR. DAVIS: That's true, but I've heard --
- JUDGE CHACHKIN: -- that Classic Sports intends to
- 10 engage in.
- MR. HORTON: Let me give you an example, Your
- 12 Honor. He just mentioned the chairman and the president of
- 13 his company. There are specific allegations in our
- 14 complaint regarding things said and actions taken by both of
- those gentlemen. We have specific allegations about them.
- 16 That's obviously -- and we want to see what they're going to
- 17 say about this. This is a high-profile matter that was
- 18 clearly dealt with at the top levels of their company.
- This is not a slip-and-fall case. We can surely
- 20 carve down the amount of discovery that's needed if they're
- 21 prepared to drop all the defenses that they raised on
- 22 pricing and channel capacity, and various other things. But
- 23 we certainly can't be in the position where we come into a
- 24 hearing and are hearing about defenses that have been raised
- and we're not even allowed to test.

- 1 Again, I'll suggest that we sit down and go over
- 2 it. I think you hear from the exchange why I'm not sanguine
- 3 about it, but stranger things have happened. I think we
- 4 ought to give it a shot.
- 5 MR. DAVIS: Well, I know you're quite tired of us.
- 6 But I'll say that allegations are easily made, and they're
- 7 unsupported. And if that's the basis for deposing the
- 8 highest officers for a company, then chairmans of the board
- 9 and presidents would do nothing but sit in depositions all
- 10 day. That's not the law in any tribunal.
- JUDGE CHACHKIN: Well, all I'm going to do is --
- the parties can sit down and try to reach an agreement. To
- the extent to which they can reach an agreement on persons
- 14 to be deposed and the scope of document production, fine.
- 15 If they can't, if there's objections made, I'll rule on it.
- 16 We'll have another conference, I'll have the -- let the
- parties have their say before me, I'll permit the parties to
- say anything further they have to say, and I'll make a
- 19 ruling and we'll proceed.
- I certainly think discovery is reasonable. I
- 21 don't see how you can expect the other side to go into
- hearing and be prepared to cross examine your witnesses
- without an opportunity to find out in advance what their
- 24 testimony's going to be, so that they can prepare for cross
- examination. I mean, that's only reasonable.

1	Certainly I'm not going to permit unreasonable
2	discovery. If, as you say, individuals had nothing to do
3	with any decision-making, obviously there's no need to
4	depose them. But on the other hand, if there is some
5	evidence indicating that they did play a role, then it seems
6	to me that the right to discovery is there, to depose these
7	individuals. So we'll just have to wait and see.
8	As I say, I don't have any of the facts before me,
9	so I'm in no position at this time to make any
10	determinations since I haven't seen the allegations, or the
11	defenses.
12	MR. HORTON: Well, we'll get those in front of
13	Your Honor. And Mr. Davis and I will move very quickly,
14	we'll resolve as much as we can so we don't have to put that
15	in front of you, and if there's matters left unresolved,
16	they'll be crossing your desk.
17	JUDGE CHACHKIN: All right. Let me if you
18	could outline me what your discovery schedule is going to
19	be? When do you intend to first of all, you said you're
20	going to make a request for documents and you're also going
21	to file interrogatories?
22	MR. HORTON: Correct, Your Honor.
23	JUDGE CHACHKIN: And how soon are you going to do

that?

24

25

MR. HORTON: Our hope is to file them, barring

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- emergencies, by the end of this week. They're in process
- but they're not quite ready to go. If they're not by the
- 3 end of this week, the weekend will get it done.
- JUDGE CHACHKIN: All right. And then, insofar as
- 5 depositions, when do you intend to start your depositions?
- 6 I assume you want to wait until you get the -- obviously,
- 7 the documents you're seeking, and answers to
- 8 interrogatories?
- 9 MR. HORTON: That's correct, Your Honor.
- 10 JUDGE CHACHKIN: But I assume once that is
- 11 completed, you would then proceed to take depositions?
- MR. HORTON: Our plan would be to move quickly
- into the depositions, the normal -- as I recall, the time
- 14 dates for responses to interrogatories and documents is a
- 15 few days different. And I don't know what Mr. Davis needs,
- 16 but they're also very short time frames. But our hope is
- 17 that we could get responses to our written requests in
- 18 reasonably short order.
- 19 If we filed them by this week, then we'd have our
- 20 responses -- under the rule, we'd have them the first week
- 21 of October. Any additional time would mean that we'd have
- them, hopefully, by mid-October at the latest. And our plan
- 23 would be to start taking depositions about then. If we went
- 24 to the end of the year, that's two and a half months for
- depositions, my only trepidation about that is the holidays,

- of course, and December is not a full month.
- Again, this -- we would like to proceed, but it's
- an important case for us, and we don't want to proceed
- 4 unprepared. So our thought had been to get the written
- 5 discovery responses in no later than the middle of October.
- 6 Hopefully finish the depositions by the end of the year, or
- 7 if not, then to -- you know, if we had to go sometime into
- 8 January to complete them with holiday and travel schedules.
- JUDGE CHACHKIN: Well, I would hope you could
- 10 finish depositions by the end of November if you get all
- 11 your documents and interrogatories by the middle of October.
- 12 That 30 days would be sufficient for your depositions, since
- 13 you're talking about 10 depositions.
- 14 MR. HORTON: If that would be enough time to take
- the depositions, subject -- since I'm asking to take them
- 16 all, I would certainly want to accommodate them for
- 17 scheduling as much as possible.
- JUDGE CHACHKIN: Well, that would seem to be the
- 19 best time for the holidays.
- 20 MR. DAVIS: Your Honor, I'm a little confused on
- one thing. There initially was a hearing on the merits
- 22 scheduled for the first week of November.
- JUDGE CHACHKIN: Well, that was just preliminary
- 24 dates since the date has to be set. But that wasn't
- intended to be necessarily the date for the hearing. It

- just is a matter of procedure, a date is always put down.
- 2 And if it's possible, depending on the nature of the
- 3 hearing, it is held. If not, obviously, new dates are set.
- 4 In this case it seems that new dates are necessary.
- So, as far as the hearing is concerned, when do
- 6 you think a reasonable date for the commencement of the
- 7 hearing? Is February -- do you think that would be
- 8 reasonable?
- 9 MR. HORTON: I would think so, Your Honor.
- 10 Obviously, we need some time to digest what's happened in
- 11 discovery. We certainly wouldn't want to wait any later
- than that if at all possible, consistent with your schedule.
- 13 Again, we're the ones that want the relief.
- JUDGE CHACHKIN: Well, I'm willing January or
- 15 February, as far as that goes. To start the hearing in the
- middle of January is all right with me, too.
- MR. HORTON: I would suggest that perhaps if we
- 18 could do it by the third week of January, something like
- 19 that in general. That ought to be fine.
- 20 JUDGE CHACHKIN: Does the Cable Bureau have any
- 21 problems with the schedule as we're talking about it?
- MS. KLINE: Your Honor, subject to agreement of the
- parties, no, that would be fine.
- JUDGE CHACHKIN: Does someone have a calendar for
- 25 next year? I don't have one. What's the third week in

- 1 January?
- MS. KLINE: It would be the 19th.
- JUDGE CHACHKIN: Is that a Monday or a Tuesday?
- 4 MS. KLINE: Well, that's a Monday. That's a
- federal holiday. Would you want to go to Tuesday, the 20th?
- JUDGE CHACHKIN: Sure. All right, we'll
- 7 tentatively set the hearing date for January 20th. Now, we
- 8 also have to have a date for exchange of exhibits and for
- 9 notification of witnesses for cross examination. Normally,
- 10 the exchange of exhibits is two weeks before the hearing,
- 11 unless the parties want to vary it. But if not, the
- 12 exchange of exhibits will be on January 6th.
- MR. DAVIS: Your Honor, do you ordinarily prefer
- 14 that the exhibits include rebuttal exhibits or impeachment
- 15 exhibits as well? Or just direct case exhibits?
- 16 JUDGE CHACHKIN: Direct case. But I'm prepared to
- 17 entertain any request of the parties. If you want to
- include rebuttal exhibits, I have no problem with that. If
- 19 you know what your rebuttal is going to consist of at that
- 20 point.
- MR. HORTON: My preference would be direct case,
- 22 Your Honor.
- JUDGE CHACHKIN: Yes. Well, I'll leave it to the
- 24 parties. If they want to include rebuttal, they can. But
- 25 I'm not going to require it.

1	MR.	HORTON:	That's	fine.

- JUDGE CHACHKIN: And now, as far as witnesses are
- 3 concerned, that are going to be called at the hearing.
- 4 Ordinarily, again, January 13th would be the week before the
- 5 hearing, the date for notification of witnesses. Now, if
- 6 you indicate in your exchange the witnesses you intend to
- 7 call orally, then there's no need for the other party to
- 8 indicate that they want to cross examine that particular
- 9 witness. But if there are other witnesses which are not
- apparent, there should be a notification on January 13th of
- 11 those witnesses you want to cross examine.
- MR. DAVIS: Should we do anything in particular,
- if there's going to be any third party witnesses, in terms
- of giving prior notification for that? Or is that on the
- 15 13th as well?
- JUDGE CHACHKIN: What do you mean by prior
- 17 notification?
- MR. DAVIS: I wasn't sure if the witness list you
- were referring to due January 13th refers to party
- 20 witnesses, or all the witnesses a party intends to call for
- 21 its direct case.
- JUDGE CHACHKIN: All the witnesses. Well, January
- 23 13th -- well, what I'm suggesting is that January 6th,
- including and in addition to your exchange of exhibits, you
- 25 should include a list of witnesses that that particular

- 1 party intends to call.
- 2 MR. DAVIS: I see.
- JUDGE CHACHKIN: And I'm saying if there are other
- 4 witnesses that the other party wants to cross examine which
- 5 are not on that list, that that notification should be made
- 6 on January 13th.
- 7 MR. DAVIS: I understand. Is a party then
- 8 permitted to call a witness, an adverse witness, as part of
- 9 its direct case? If they want, for example, if we wanted as
- 10 part of our direct case and they as part of their direct
- 11 case wanted to call a person affiliated with the other
- 12 party, is that the kind of thing you're referring to for
- 13 cross examination?
- JUDGE CHACHKIN: Well, I didn't have that in mind.
- 15 I had in mind, for instance, where parties exchange an
- 16 affidavit, but then they'd indicate that they wanted to call
- 17 -- that they intended to have that witness testify orally.
- 18 So that the other party would then notify that they do want
- 19 to cross examine that individual who submitted an affidavit.
- 20 That's what I had in mind.
- MR. DAVIS: Okay.
- JUDGE CHACHKIN: I hadn't gotten around to
- 23 thinking whether you want to call adverse witnesses. I
- 24 would think in this type of case, you probably -- both
- 25 parties would want to put on their own witnesses and cross

- 1 examine the adverse witness. But --
- 2 MR. HORTON: That's what I would suppose, Your
- 3 Honor. If an issue like that comes up I'd suggest that Mr.
- 4 Davis and I try to talk it through, and if we have a problem
- 5 we'll come to you. But I would think we could probably work
- 6 out things like that.
- JUDGE CHACHKIN: All right. Now, insofar as we're
- 8 setting a January 20th hearing, while I would hope that the
- 9 parties could complete discovery by the end of November, I
- 10 have no problem with saying all discovery has to be
- 11 completed by the end of December. Since it still would
- 12 allow enough time for the parties to -- well, maybe that's a
- 13 little late. Maybe December 15th would be a good time to
- 14 conclude discovery so that there's time for the parties to
- 15 exchange exhibits and get to the hearing phase.
- So I'm going to set a December 15th date for
- 17 completion of discovery. I don't know what date that is.
- 18 What is December 15th?
- 19 MS. KLINE: December 15th is a Monday.
- JUDGE CHACHKIN: Monday? That's fine.
- MR. HORTON: Appreciate that, Your Honor. That
- 22 might make it a little bit easy just to work out schedules.
- JUDGE CHACHKIN: All right. Now, is there
- 24 anything else the parties want to discuss this morning
- 25 concerning the hearing?